

***Revised Draft* MEETING MINUTES
CITY OF MILPITAS**

Minutes of:	Regular Meeting of Milpitas City Council
Date:	Tuesday, April 7, 2015
Time:	5:30 PM
Location:	Council Chambers, Milpitas City Hall, 455 East Calaveras Blvd., Milpitas, CA

CALL TO ORDER

Mayor Esteves called the meeting to order at 5:30 PM. The City Clerk noted the roll.

PRESENT: Mayor Esteves, Vice Mayor Montano, Councilmembers Barbadillo and Grilli

ABSENT: Councilmember Giordano was not present at the roll call. Mayor Esteves awaited her arrival to start, and did so at 5:33 PM.

STUDY SESSION

City Council convened for a Budget Study session for the first part of the meeting.

City Manager Tom Williams and Finance Director Emma Karlen presented the staff report to the City Council, with an overview of the proposed FY 2015-16 budget.

Councilmember Giordano asked about the process and information by department, since she would have questions on some of the department budgets.

Vice Mayor Montano inquired about where the largest number of employees had been laid off in the City several years ago. The City Manager responded that was in Public Works.

Councilmember Giordano asked questions about the City Attorney's request for the position of Deputy City Attorney to be added. City Attorney Mike Ogaz responded that the position would be able to do litigation work, and thus allow for less hiring of outside counsel. This would achieve more savings with in-house counsel. Councilmember Giordano asked for data looking back on costs of City Attorney's office from 2000 to the present, showing the cost of the contract City Attorney firm in the past versus current in-house services. Staff agreed to provide that.

Mayor Esteves commented that for special subjects, the City hired outside counsel. He asked if that was that part of the budget. The City Manager replied that the odor issue legal matters were outside of the budgeted costs.

Mayor Esteves said the reduction in the number of employees in 2013 should yield a footnote about contracting out landscape services, in the budget description.

Ms. Karlen reviewed a list of various Position Funding Requests, totaling \$1.787 million, while identifying \$716,000 that was available to pay for any added staff positions.

Councilmember Giordano inquired about Police staffing and justification for the request to add three police officers.

Mayor Esteves suggested consideration of the ratio of police officers per 1,000 residents, upon determining whether to add police officers to the new budget.

Chief Pangelinan answered questions about police at the Great Mall (4 officers) and the contract for the Mall to pay for three of those. He reported that 1.1 police officers per 1000 was the staff ratio in Milpitas while the county average was 1.2. With three additional police officers added, the average would be 1.2 and 88 total officers.

Vice Mayor Montano would like to see a satellite Police Department office at McCarthy Ranch in the future very soon.

Next staff presented some budget summary information in overhead slides, with graphs and charts.

Councilmember Grilli said she would like the information on the Deputy City Attorney referred to by Councilmember Giordano, before deciding on that position. Mayor Esteves asked for an explanation of costs for a Deputy City Attorney versus contracting out.

Mayor Esteves asked for the staff recommendation on a staff position for grantwriting, which was to hire a consultant rather than full time staff, where a person could be hired on contingency basis.

Councilmember Giordano requested a breakdown on residential versus commercial property tax revenue. Ms. Karlen responded she could get that information from Santa Clara County.

Councilmember Grilli asked about the costs for reorganization and reclassification of various City positions (in four bulleted recommendations) which staff explained.

Vice Mayor Montano asked the rate of pay for contracted janitors per hour. City Manager Williams said he could get that figure, based on the prevailing wage paid by the contractor and the agreement made with the South Bay Labor Council.

Mr. Karlen Emma explained PERS rate stabilization fund, and changing to the "Annual Required Contribution" approach to PERS contributions for the City of Milpitas. That would be in contrast to a stated percentage of payroll, as annually calculated to date.

Following the conclusion of the budget study session, then Mayor Esteves convened the start of the regular Council meeting at 7:13 PM.

PLEDGE

Boy Scouts Troop No. 92 presented the flags and led the pledge of allegiance.

INVOCATION

Councilmember Barbadillo read from the bible, and said prayers to start the meeting.

MEETING MINUTES

Motion: to approve the minutes of March 17, 2015 City Council meeting

Motion/Second: Councilmember Giordano/Vice Mayor Montano

Motion carried by a vote of: AYES: 5
NOES: 0

SCHEDULE OF MEETINGS

Motion: to approve Council Calendar/Schedule of Meetings for April 2015

Motion/Second: Councilmember Giordano/Vice Mayor Montano

Motion carried by a vote of: AYES: 5
NOES: 0

PRESENTATION

Mayor Esteves commended Alan Pham, Milpitas High School student, for his efforts at organizing the 2nd annual MHS Inter-School Science Fair.

PUBLIC FORUM

Alvin White, Milpitas resident, remarked on his bicycle wheels that were removed from Selwyn Drive. He claimed that one of his vehicles was stolen by the Milpitas Police Department.

Robert Marini, Milpitas resident, commented on a new charge to customers proposed for use of credit card to pay city invoices. He gave his view on sewer rate calculations and of over-charges based on rates per number in a household.

City Attorney Mike Ogaz reported to the City Council that Mr. Marini was unsuccessful in his very recent latest attempt suing the City in small claims court regarding rates.

Liz Ainsworth, Milpitas Chamber of Commerce, announced the availability of the new City map just published by her organization. The monthly Chamber's business breakfast was off to a great start, with City participation. She highlighted the International BBQ and Festival event in May.

Sean Hissan and Muneerah Merchant from the Aga Khan Foundation, invited the City Council and students to attend upcoming event to focus on water conservation, held at Milpitas Senior Center this coming Saturday, April 11 from 10:00 AM to 3:00 PM, for young students in Milpitas.

Rob Means, 1421 Yellowstone, was concerned about global climate change.

Tom Valore, 25 year resident of Milpitas, referred to the last City Council meeting on the odor control report. He stated the public was never given a chance to comment.

Voltaire Montemayor, Milpitas resident, liked singing and dancing, and sought a location for a competition like American Idol in Milpitas.

ANNOUNCEMENTS

Councilmember Giordano met with Mr. Santos of SCVWD recently. She made note of a rebate program the District offered and could do so in partnership with the City. On April 11, the Knights of Columbus awards dinner was scheduled, and she highlighted the winners of Firefighter, Police Officer and Citizen of the Year. In closing, Councilmember Giordano asked to close in memory of Michael Johnson, the City of San Jose police officer killed in the line of duty.

Councilmember Grilli had heard from residents in the Pines neighborhood, affected by parking by new residents in developments nearby. She requested a report on how to deal with the parking issues in the Pines, and to seek a solution. The City Manager replied that the City Engineer could return with that report.

Mayor Esteves commented on water conservation, there should be an announcement on the required reduction in water use statewide. The Mayor urged all to conserve water together.

ANNOUNCEMENT OF CONFLICT OF INTEREST AND CAMPAIGN CONTRIBUTIONS

City Attorney Ogaz asked the Mayor and Councilmembers if they had any personal conflicts of interest or reportable campaign contributions. No conflicts or contributions were reported.

APPROVAL OF AGENDA

Motion: to approve the agenda

Motion/Second: Councilmember Giordano/Vice Mayor Montano

Motion carried by a vote of: AYES: 5
NOES: 0

CONSENT CALENDAR

Councilmember Giordano stated that on agenda item No. 9 on the Ordinance regarding Town Center and no residential development, she would vote no. She requested removal of Item No. 15 on the resolution naming Newby Island as a public nuisance, and to move it to the next City Council meeting.

Vice Mayor Montano asked to remove items no. 12 (Resolution awarding contract for AudioVisual upgrade), no. 13 (Resolution for Main St. work), no. 17 (Maze firm for audit services) and no. 18 (contract for media services).

Councilmember Grilli supported moving item no. 15 to the next meeting because she wanted more information including an online petition which apparently 17,000 people signed.

City Attorney Ogaz responded he could provide the petition to the Council but was not sure he could get names of who signed it online.

Mayor Esteves suggested to remove the item from consent and have some preliminary discussion at this meeting. He did not think it mattered how many signed the petition.

Councilmember Giordano moved, and Councilmember Grilli seconded, a motion to remove all items identified by the Vice Mayor from consent and to push no. 15 to the next meeting. Her motion failed on a vote of 2 Ayes (Giordano, Grilli) and 3 Noes.

Motion: to approve the consent calendar, with removal of agenda items no. 12, no. 13, no. 15, no. 17 and no. 18 from consent for discussion

Motion/Second: Councilmember Grilli/Vice Mayor Montano

Motion carried by a vote of: AYES: 5
NOES: 0

- * 3. Commission Appointment Newly appointed Michael Lee to the Community Advisory Commission as Alternate No. 3 to a term that will expire in January of 2016.
- * 7. Fee Waiver Per request from Our Lady of Guadalupe Club, approved fee waiver of \$800.00 toward rental cost for the Community Center for Mother's Day Event on Saturday, May 9, 2015.
- * 9. Adopt Ordinance Waived the second reading and adopted Ordinance No. 38.820 amending the Town Center Zone prohibiting all new residential uses while allowing existing and previously approved residential uses to continue.

The vote on this ordinance only was: 4 Ayes and 1 No (Giordano).
- *10. Resolution Adopted Resolution No. 8458 requesting allocation and making certain findings relating to Transportation Development Act, Article 3 Funds for 2016 Street Resurfacing Project.
- *11. Resolution Adopted Resolution No. 8459 granting initial acceptance of the Pinewood Park Improvements, Projects No. 3412, No. 5095, No. 5096, and No. 7116, subject to a one year warranty period, and reduction of the faithful performance bond to \$181,797.45; and granting authorization to the Director of Engineering to issue the notice of final acceptance after the one-year warranty period and to release and discharge the performance bond without further City Council action.
- 12. Resolution related to Audio Visual upgrade This matter was removed from consent and was not heard.
- 13. Resolution related to Main Street Pavement contract This matter was removed from consent and was not heard.
- *14. Resolution Adopted Resolution No. 8460 approving an agreement with Central Medical Laboratory, Inc. for drug and alcohol testing in the annual not-to-exceed amount of \$19,500.00 and for a term from April 15, 2015 to April 14, 2016; and authorized the City Manager to extend the term of the agreement on an annual basis for up to four years with an annual increase of no more than 5% per year, without further City Council approval except appropriation of funds.
- 15. Resolution Declaring Public Nuisance This matter was removed from consent and was not heard.
- *16. Amendment to Agreement with Ted S. Farr for EMS Data
 - 1) Approved Amendment No. 1 to the consultant agreement with Ted S. Farr in the additional compensation amount of \$15,000 for implementation of the countywide Comprehensive EMS Patient Care Data System.
 - 2) Appropriated funding to the Fire Department's operating budget in the amount of \$53,575.04 from the Santa Clara County Emergency Medical Services trust fund.

17. Maze & Associates audit	This matter was removed from consent and was not heard.
18. Modern Day Marketing	This matter was removed from consent and was not heard.
*19. Agreements with County	Approved two agreements with the County of Santa Clara for collection of AB939 Implementation Fees and administration of the Countywide Household Hazardous Waste Collection Program.
*20. Amend Agreement with RMC Water & Environment	Approved Amendment No.1 to the Consultant Services Agreement with RMC Water and Environment, Inc. for Utility Engineering support in the amount of \$58,000 and for a term through December 31, 2015.
*21. Agreements with Harris & Associates and CSG	Approved agreements with Harris & Associates, Inc. in the amount of \$80,000 and with CSG Consultants, Inc. in the amount of \$70,000 for terms from April 7, 2015 to December 31, 2015 for engineering support services.
*22. New CIP for McCandless Park	Approved new project in the Capital Improvement Program - Project No. 5102 for McCandless Park. Approved a budget appropriation of \$300,000 from Transit Area Specific Plan (TASP) impact fees to the new CIP No. 5102. Approved an agreement with Environmental Foresight, Inc. in the amount not to exceed \$248,400 to prepare the McCandless Park Project No. 5102 for a term from April 7, 2015 to June 30, 2019.
*23. Approve Payment to Jensen School	Per existing agreement with Jensen School of Performing Arts for Pre-K Enrichment and Youth Program classes, authorized payment in the amount of \$40,000.

PUBLIC HEARING

1. Ordinance requiring funding for Public Art by developers	<p>Senior Planner Adam Petersen provided description of the proposed requirement for public art and to create a fund that developers would pay into for art works in the City, based on a similar ordinance in the City of Emeryville. 1% of the project cost would go into the fund, as proposed in the draft City ordinance.</p> <p>Councilmember Giordano thought the rate was a little high and asked about the recommendation from the Planning Commission.</p> <p>Vice Mayor Montano asked if the ordinance was reviewed by the Arts Commission and would that group review any public art built at a project (if developer did not pay the fee). She'd like the ordinance to state that art could include murals and other mediums, even plants. She urged the promotion of historic preservation of city in this ordinance too.</p> <p>Staff reported that 1% of funds could be used toward maintenance of art work, including historic pieces.</p> <p>Councilmember Barbadillo asked questions about the type of art projects at high value developments, how they would be determined for their financial worth, and whether developer would pay the difference to the City if the art piece was valued at a number lower than 1% of project cost. He urged that to be a condition of approval or required within the ordinance.</p> <p>City Attorney Ogaz replied that he could provide new language in the ordinance at the second reading (next meeting) and be flexible to developers.</p> <p>Mayor Esteves asked about affordable housing, excluded from this requirement. That term needed to be defined clearly and asked for that to be updated in the revised text of the ordinance at next meeting. The Mayor also wanted to know who would decide if art work was one that applied to the fund or was already part of the architecture of the building. He had further questions and concerns about the art's financial value.</p>
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Next, the Mayor opened the public hearing.

Robert Marini, Milpitas resident, felt there would be conflict of interest when imposing a fee on developers to build art work on new developments. That was not fair to the public nor to developers.

Councilmember Giordano said developers already pay a lot of impact fees on new development. The public gave input at public hearings on new proposals.

Voltaire Montemayor, Milpitas resident, said there would be an upgrade from the standard. He wanted Milpitas to be beautiful and agreed on adding art in Milpitas. A third party should decide valuation of the art.

(1) Motion: to close the public hearing, after hearing speakers

Motion/Second: Councilmember Giordano/Councilmember Grilli

Motion carried by a vote of: AYES: 5
NOES: 0

City Attorney Mike Ogaz read aloud the title of Ordinance No. 38.821, "An Ordinance of the City Council of the City of Milpitas Amending Chapter 10 of Title XI of the Milpitas Municipal Code Adding Section 14 to the Zoning Code Relating to Public Art Requirements for Private Development."

(2) Motion: to waive the first reading beyond the title of Ordinance No. 38.821

Motion/Second: Councilmember Giordano/Vice Mayor Montano

Motion carried by a vote of: AYES: 5
NOES: 0

(3) Motion: to introduce Ordinance No. 38.821 regarding public art requirements

Motion/Second: Councilmember Giordano/Vice Mayor Montano

Mayor Esteves expressed that he wanted included in the motion that the ordinance would include affordable housing as defined, and that the value or cost of the art work should be affirmed by the City.

Motion carried by a vote of: AYES: 5
NOES: 0

UNFINISHED BUSINESS

2. Odor Control Update

City Engineer Steven Machida updated City Council with number of complaints about odor, as reported both to the City and to the Bay Area Air Quality Management District hotline. He announced that on Thursday, April 23, 2015 from 6:00 – 8:00 PM, the BAAQMD would hold a public meeting on its roles and strategies to deal with odor in the city as result of hotline complaints.

Councilmember Giordano mentioned the online petition, and a number of those who signed. She asked Mr. Machida if she could know how many complaints came from Milpitas residents and he replied he could get back to her with that information.

Vice Mayor Montano reported that she had visited Newby Island Landfill recently, and saw where they do the composting. That was where she noticed the bad smell which was more frequent now than in the past.

Jeanne Serpa of Republic Services came to podium to describe when composting started at Newby Island, approximately in the mid-1990s, so for close to twenty years. She responded to additional questions from the Vice Mayor.

Next, Mayor Esteves invited speakers.

Tom Valore, Milpitas resident, wanted to go back to the March 17 meeting agenda and report on this issue. He took issue with some of the comments in the prior report. So far, only anecdotal information had been presented, not scientific data. No one had definitively determined the source of odor in Milpitas and he also took issue with the \$800,000 figure as an impact to the City.

Don Litchfield, of Republic/Newby Island, said more information had been collected in the last few months. Odor issue was getting out of control since November while a solution had been found. Odor mitigation had been implemented, but now they were expanding capacity. It was necessary to determine other sources of odor in the area.

Mayor Esteves commented that the issue had been around for decades so he asked why Republic was only coming forward now. Mr. Litchfield replied and tried to answer several comments and questions from the Mayor. Mr. Litchfield offered several times to provide an on-site tour to City Council to view recent mitigation measures in place.

Vice Mayor Montano asked if there was any difference in the last five months, since she last visited. Mr. Litchfield replied yes, significantly.

The Mayor invited additional speakers to the podium.

Robert Marini, Milpitas resident, commented on the odor issues in Milpitas.

Liz Ainsworth, Milpitas resident, talked about various locations she had lived in town and the need to get rid of the smell. She was frustrated as the Mayor was. The concern she had was that there were multiple sources. So much time was spent looking at Newby Island and the City might deal with that source, but then the smell could still be there. So it was important to find out what the cause was.

Voltaire Montemayor, Milpitas resident, was determined that the City would solve the problem of odor.

Jennifer, a 15 year resident of Milpitas, noted 6,000 was the number of online signers to the petition and about 4,000 signed going door to door on paper petitions from Milpitas. She gave numbers of those who signed from Fremont and San Jose too. She discussed a landfill in southern California, where it was expanded and then thousands of complaints followed after the expansion. She urged stopping the expansion of Newby Island.

Councilmember Grilli asked her if she would produce the petition to City staff. The speaker did agree to do so and send it to the City Attorney.

Motion: to receive the oral report from the City Engineer on odor update

Motion/Second: Councilmember Giordano/Vice Mayor Montano

Motion carried by a vote of: AYES: 5
NOES: 0

At 9:18 PM, City Council took a break.

When they returned, Vice Mayor Montano recommended a motion to reschedule the 9:00 PM Special Meeting and that was seconded by Councilmember Grilli.

City Manager Williams asked if the City Council could agree that he receive information that generated the Special Meeting agenda be provided to him by the City Attorney.

Councilmember Giordano wanted to hear the matter urgently on this night. Otherwise, she knew there was a long agenda already.

Vice Mayor Montano then rescinded her motion.

Motion: to continue with the spirit of the scheduled meeting agenda: adjourn the regular meeting and go into Closed Session Special Meeting as scheduled for 9:00 PM, with the remaining items on the regular agenda to be rescheduled to the next meeting date

Motion/Second: Councilmember Giordano/Councilmember Barbadillo

Motion carried by a vote of: AYES: 3
NOES: 2 (Esteves, Montano)

The regular City Council meeting was thus adjourned at 9:32 PM.

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| 4. CalPers Report by Ron Lind | This matter was not heard. |
| 5. City Web Site | This matter was not heard. |
| 6. Solid Waste Program report | This matter was not heard. |
| 8. PERS Amendment | This matter was not heard. |

ADJOURNMENT Mayor Esteves adjourned the meeting at 9:32 PM.

*Meeting minutes drafted and respectfully submitted by
Mary Lavelle, City Clerk*